



UNITED STATES SENATE
**REPUBLICAN
POLICY COMMITTEE**

Larry E. Craig, Chairman
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August 3, 2001

Results that Make Your Head Spin

The ABA's Record on Judicial Nominees

Professor James Lindgren of Northwestern University has just completed a study of the American Bar Association's system for rating nominees to federal judgeships. The results will make your head spin — even if you're not a Republican. If you are a Republican, you may not notice your head spinning until your stomach stops churning.

Professor Lindgren looked at a total of 108 nominees who were eventually confirmed to the United States Courts of Appeals from the first Bush Administration and the Clinton Administration. Each of the nominees was rated by the American Bar Association and judged to be either "Not Qualified," "Qualified," or "Well Qualified." Lindgren compared the ABA's ratings with his own six objective criteria of academic excellence and professional accomplishment. The results?

- The odds of a candidate with *none* of the six objective qualifications being rated "Well Qualified" were *16.6 times higher* for a Clinton nominee than for a Bush nominee.
- Among the nominees *without* judicial experience, Clinton nominees have 10.5 times greater odds of being rated "Well Qualified" than Bush nominees. Unlike Clinton nominees, Bush nominees without judicial experience have little hope of being rated "Well Qualified."
- Time after time, in regression analysis after regression analysis, the study shows that the single most important fact in obtaining a high ABA rating was . . . being nominated by Bill Clinton! The fact that a nominee had been chosen by President Clinton carried more weight with the ABA than any other single credential or *even the sum of all six credentials*.
- Leaving aside judicial experience, a Clinton nominee with *none* of the other objective criteria had a *significantly better* chance of being rated "Well Qualified" than a Bush nominee who *had all of the other qualifications, i.e.* who had attended a "top-10" law school, been on law review, clerked with a federal judge, practiced law in the private sector, *and* worked as a government attorney! This head-spinning (stomach

turning) fact is shown in the chart on the next page:

**Getting Rated “Well Qualified”
by the American Bar Association:
How the Distinguished Achievements of Republican Nominees
Don’t Count for Nearly as Much as the
Absence of Achievements of Democratic Nominees**

Circuit Court Nominees of <u>President Bush</u>	<u>Experience</u>	Circuit Court Nominees of <u>Pres. Clinton</u>
YES	☞ JD DEGREE FROM TOP-10 SCHOOL? ☞	NO
YES	☞ MADE LAW REVIEW? ☞	NO
YES	☞ CLERKED FOR A FEDERAL JUDGE? ☞	NO
YES	☞ PRACTICED IN PRIVATE SECTOR? ☞	NO
YES	☞ WORKED AS A GOV’T ATTORNEY? ☞	NO
<u>32 percent</u>	☞ Probability of Getting Highest Ranking ☞	<u>48 percent!!!</u>

Professor Lindgren is a scholar. He does not make partisan charges, as the measured tone of his article shows. Consider, then, the following excerpt from his conclusion:

“If one examines Bush and Clinton nominees separately, one sees that Bush nominees face an uphill battle to get the ABA’s highest rating. . . . On the other hand, the[] measured credentials have only a modest effect on the already favorable odds that a Clinton nominee will be rated well qualified. The process for Bush nominees is substantially objective; the process for Clinton nominees is almost entirely subjective.

“The differences in how the ABA treats Bush and Clinton nominees reaches even to the committee’s internal decision making. The ABA committee split its vote 33% of the time while evaluating Bush appointees, but only 17% of the time when evaluating Clinton appointees. . . . These splits are doubly odd because the Clinton appointees were more subjectively evaluated than the Bush appointees. This odd unanimity is suggestive of a strong shared mindset favoring Clinton appointees without regard to measured credentials.”

Written by Lincoln Oliphant, 224-2946

Preliminary results of the Lindgren study are published in the latest edition of the Federalist Society’s newsletter, “ABA Watch.” For this RPC paper, we have used a more recent but undated version of the study. The complete study, tentatively titled “Examining the American Bar Association’s Ratings of Nominees to the U.S. Courts of Appeals for Political Bias, 1989-2000,” will be published this fall in the *Journal of Law and Politics*. A Republican/Democratic nominee is a person nominated by a Republican/Democratic president; the term says nothing of the party affiliation of the nominee himself.